

## **REMARKS**

The amendments to claims 1, 3-7, and 12-17 were made solely for clarification and are fully supported by the description in the specification (e.g., page 9, lines 6-10; page 10, lines 4-21; FIG. 1; etc.).

No new matter has been added. Upon entry of this Response, claims 1-19 remain present and active in the application.

### **Request for Personal Interview with Examiner**

On page 10 of the Response to Final Office Action dated October 8, 2008, Applicant requested a personal interview with the Examiner in order to discuss the outstanding grounds of rejection prior to the issuance of any further Office Actions. Notwithstanding, a subsequent Office Action dated November 7, 2008 was issued without affording Applicant the opportunity to schedule the requested interview.

Accordingly, unless all of the presently outstanding grounds of objection and rejection are withdrawn in light of the Amendment and Remarks herein, Applicant respectfully reiterates his request for a personal interview with the Examiner in accordance with MPEP § 713.01(III) prior to the issuance of any further Office Actions by the Examiner.

### **Objection to Specification**

The objection to the specification as failing to provide proper antecedent basis for the claim terms "memory" and "controller" has been obviated by amendment. Accordingly, withdrawal of this ground of objection is respectfully requested.

### **Claim Rejections – 35 U.S.C. § 112**

1. The rejection of claims 1-2, 11-12, and 19 under 35 U.S.C. § 112, second paragraph, as being incomplete for allegedly omitting essential elements is respectfully traversed.

Applicant respectfully traverses the assertion in the Office Action (page 3, section 5, first paragraph) that there is any omission amounting to a gap between the elements in

either of independent claims 1 or 12. On the contrary, the recitation in each of independent claims 1 and 12 of "a computer configured for...correcting the result when the analyzer used in the assay does not have a dilution mode and the sample used in the assay is a diluted sample" (emphasis added) corresponds in and of itself to a complete and operative device. A computer so configured will possess the wherewithal (e.g., the data structure or so-called "functional descriptive material" as defined in the *Manual of Patent Examining Procedure* § 2106.01) to perform the recited operation. With regard to more specific structures for achieving the recited operation, Applicant desires that recitations regarding, for example, the database storage of dilution rate be relegated to narrower dependent claims such as dependent claims 3 and 13, which in no way negates the completeness nor operability of independent claims 1 and 12 in their present forms.

For at least the reasons set forth above, Applicant respectfully submits that the claimed invention does not omit any essential elements. Accordingly, withdrawal of this ground of rejection is respectfully requested.

2. The rejection of claims 1-19 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention is respectfully traversed.

Contrary to the assertion in the Office Action (page 4, lines 2-3) that the specification does not disclose what the recited "analyzer code" corresponds to, Applicant respectfully draws the Examiner's attention to the specification (e.g., page 13, lines 10-12), which describes that the "sample and analyzer specification codes" are "for specifying the type of sample and analyzer."

In view of the above, Applicant respectfully submits that the recitation of "analyzer code" in the claimed invention particularly points out and distinctly claims subject matter which Applicant regards as the invention. Accordingly, withdrawal of this ground of rejection is respectfully requested.

**Claim Rejections – 35 U.S.C. § 103**

1. The rejection of claims 1-9 and 12-19 under 35 U.S.C. § 103(a) as being unpatentable over *Admissions by Applicant* in view of *Mandler et al.* (U.S. Patent No. 6,275,150 B1) is respectfully traversed. As further explained below, the combination of *Admissions by Applicant* and *Mandler et al.* fails to teach or suggest each and every element of independent claims 1 and 12.

Each of independent claims 1 and 12 recites "a computer configured for determining whether the analyzer used in the assay has a dilution mode and the sample used in the assay is a diluted sample, and for correcting the result when the analyzer used in the assay does not have a dilution mode and the sample used in the assay is a diluted sample." This element is neither taught nor suggested by *Admissions by Applicant* and/or *Mandler et al.*

In the Office Action (page 5, second full paragraph), the Examiner argues as follows:

Therefore, the only difference between the known prior art as admitted by Applicant and that claimed, is the controller performing the corrective calculations on the assay result previously performed by a laboratory technician. However, the use of a controller for performing the corrective calculations on the assay result is well known in the art, see for example *Mandler*.

However, each of the biomedical analyzer instruments (Advia instruments) 20a-20c described in *Mandler et al.* contains a pre-dilution/ISE module 24 (col. 3, lines 52-54). Thus, the type of corrective calculation in *Mandler et al.* is limited to assay results obtained from analyzers with a dilution mode. Neither *Mandler et al.* nor the background section of Applicant's specification, which the Examiner relies upon for its alleged admissions, teaches or suggests corrective calculation of an assay result obtained from an analyzer without a dilution mode. More specifically, neither *Mandler et al.* nor the background section of Applicant's specification teaches or suggests "a computer configured for...correcting the result when the analyzer used in the assay does not have a dilution mode" (emphasis added), as required by each of independent claims 1 and 12.

Inasmuch as the combination of *Admissions by Applicant* and *Mandler et al.* fails to teach or suggest each and every element of independent claims 1 and 12, Applicant respectfully submits that the claimed invention is neither anticipated by nor would have been obvious in view of these citations. Accordingly, withdrawal of this ground of rejection is respectfully requested.

2. The rejection of dependent claim 10 under 35 U.S.C. § 103(a) as being unpatentable over *Admissions by Applicant* in view of *Mandler et al.* and further in view of *Okuno et al.* (EP 1107159 A2) is respectfully traversed.

Claim 10 depends indirectly from independent claim 1. However, as noted above, the combination of *Admissions by Applicant* and *Mandler et al.* fails to teach or suggest all of the elements of independent claim 1. Moreover, the deficiencies of this combination are not remedied by *Okuno et al.*, which likewise does not teach or suggest all the elements of independent claim 1.

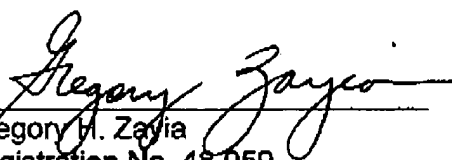
For at least these reasons, Applicant respectfully submits that the claimed invention is neither anticipated by nor would have been obvious in view of these references, individually or in combination. Accordingly, withdrawal of this ground of rejection is respectfully requested.

### **Conclusion**

In view of the Amendment and Remarks set forth above, Applicant respectfully submits that the claimed invention is in condition for allowance. Early notification to such effect is earnestly solicited.

However, if for any reason the Examiner feels that the above Amendment and Remarks do not put the claims in condition to be allowed, it is respectfully requested that the Examiner contact the undersigned agent directly at (312)-321-4257 in order to arrange a personal interview to discuss this case prior to the issuance of any further Office Actions.

Respectfully submitted,

  
Gregory H. Zayia  
Registration No. 48,059  
Agent for Applicant

BRINKS HOFER GILSON & LIONE  
P.O. BOX 10395  
CHICAGO, ILLINOIS 60610  
(312) 321-4200